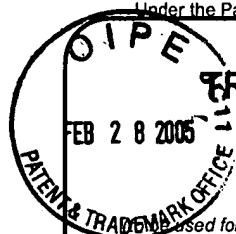


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Application Number

09/867,174

Filing Date

05/29/2001

First Named Inventor

Robert H. Scheer

Art Unit

3625

Examiner Name

Yogesh C. Garg

Attorney Docket Number

31083.05US2

## ENCLOSURES (Check all that apply)

☐

Fee Transmittal Form

☒

Fee Attached

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Amendment/Reply

☐

After Final

☐

Affidavits/declaration(s)

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Extension of Time Request

☐

Express Abandonment Request

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Information Disclosure Statement

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Certified Copy of Priority Document(s)

☐Reply to Missing Parts/  
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under 37 CFR 1.52 or 1.53☐

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Provisional Application☐

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After Allowance Communication to TC

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Firm Name

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Gary R. Jarosik

Date

February 23, 2005

Reg. No.

35,906

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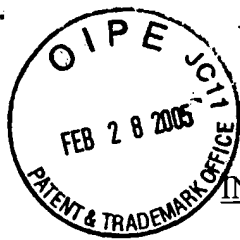
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This collection of information is required by 37 CFR 1.5. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to 2 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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3625

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Scheer )  
Serial No. 09/867,174 ) Examiner: Yogesh C. Garg  
Filed: May 29, 2001 ) Art Unit: 3625  
Title: Method For Selecting A ) Attny Docket: 31083.05US2  
Fulfillment Plan For Moving )  
An Item With An Integrated )  
Supply Chain )

APPEAL BRIEF

Mail Stop Appeal Briefs - Patents  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

Appellants hereby appeal to the Board of Patent Appeals and Interferences from the Examiner's final rejection of claims 11-20 which rejection was set forth in the final Office Action mailed December 27, 2005. A timely Notice of Appeal was filed.

This brief is accompanied by the fee of \$500.00 as required by 37 CFR § 41.20

This Appeal Brief is being filed in triplicate.

The Commissioner is hereby authorized to charge any fee deficiency or credit overpayment to deposit account number 50-2428 in the name of Greenberg Traurig.

03/01/2005 HALI11 00000069 09867174  
01 FC:1402 500.00 DP

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By: Ranni Matar  
Ranni Matar

I. Real Party In Interest

The real party in interest is W.W. Grainger, Inc.

II. Related Appeals And Interferences

No appeals or interferences are known which will directly affect or be directly affected by or have bearing on the Board's decision in the pending appeal.

III. Status Of The Claims

In the application, claims 11-20 remain pending and, having been finally rejected, are the subject of this appeal.

Claims 1-10 were canceled during the course of prosecution.

Appendix I provides a clean, double spaced copy of pending claims 11-20.

IV. Status Of Amendments

The claims are in condition for appeal – no further amendments to the claims are pending.

V. Summary Of The Invention

With reference to Fig. 7 and Page 42, line 17+, the claimed invention is generally directed to a computer readable media having instructions for use in selecting a fulfillment plan for moving an item within a supply chain. To this end, the instructions receive an order for an item and, in response to receipt of the order for the item, a plurality of alternative fulfillment plans for moving the item from a sourcing point to one or more geographic locations within the supply chain are constructed. The instructions further evaluate each of the constructed plurality of alternative fulfillment plans against a predetermined criteria and select for implementation one of the constructed plurality of alternative fulfillment plans that most closely meets the

predetermined criteria. Predetermined criteria may include one or more of consolidation requirements, routing to delivery point, activity costs, transportation costs, holding costs, opportunity costs, excess inventory position, product age, margin on the order, customer classification, degree of cost flexibility, customer pricing tolerance, etc. The selected one of the plurality of alternative fulfillment plans is then used to position the very item that was the subject of the order at a geographic location within the supply chain.

#### VI. Issues To Be Reviewed On Appeal

1. Whether a rejection under 35 U.S.C. § 102 can be maintained when the reference being relied upon simply cannot be said to disclose “each and every” word of the invention claimed.

#### VII. Argument

##### a) Status of the claims

In the application claims 11-20 remain pending. Claims 1-10 have been canceled. No claims presently stand allowed.

##### b) Summary of the outstanding rejections of the claims

Pending claims 11-20 stand rejected under 35 U.S.C. § 102 as being anticipated by Shekar (U.S. Published Application No. 2003/0033180). In rejecting the claims, the Office Action sets forth that Shekar discloses receiving an order for an item (citing to Fig. 1 and element 110 noting that this “suggests receiving an order”), constructing a list of alternative fulfillment plans for moving the item within the supply chain (citing to paras. 0032-0034 noting

that “plans produced by master planning module 102 read on the claimed limitation”), and evaluating the constructed alternative fulfillment plans against a predetermined criteria to select a fulfillment plan (citing to paras. 0057-0061 noting that “the master planning toolkit can generate alternative fulfillment plans”).

c) Applicable case law

It is respectfully submitted that a claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631 (Fed. Cir. 1987). In this regard, “[t]he identical invention must be shown in as complete detail as is contained in the ... claim.” *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236 (Fed. Cir. 1989). The elements must be arranged as required by the claim, but this is not an *ipsissimis verbis* test, i.e., identity of terminology is not required. *In re Bond*, 910 F.2d 831 (Fed. Cir. 1990).

d) Remarks addressing the outstanding rejections

It is respectfully submitted that Shekar fails to anticipate the invention claimed for the reason that Shekar fails to disclose each and every element as set forth in the claims, fails to disclose the identical invention in as complete detail as is contained in the claims, or fails to disclose the claimed elements arranged as required by the claims.

Shekar discloses a system and method for setting strategies for make-to-stock, make-to-order, and/or assemble-to-order enterprises. (Para. 0036). More particularly, the system and method is used to create an enterprise which includes a sales plan, a master plan, and a supplier plan. The sales plan is used to produce a forecast by product, channel, or region. The master

plan uses the information from the sales plan to generate a plan to meet forecasted demands and to provide supplier requirements which are used by the supplier plan. (Para. 0032). To ensure the delivery of raw materials needed to create finished products, order commitments are communicated to a master planning module (102) which uses the master plan provided by the master planning module to ensure accurate commitment responses. (Para. 0033). An order fulfillment module (102) also exchanges order information with the master planning module (102) which takes actions such as buy, make, and move, corresponding to purchasing, production, and transportation, respectively, to ensure that orders for finished products are fulfilled. (Para. 0034).

After a master plan is created, a user may want to evaluate the master plan for its “goodness.” As described in Shekar, “goodness” is based on measurements like delivery performance, resource performance, or inventory performance. Tools are provided to assist a user in evaluating these measurements of master plan performance such that a user may determine why certain orders are late, partial or unmet, and/or how to get these orders met on time. (Paras. 0057-0058). Using the tools, a user may determine causes for problems in the performance of the master plan and users may then manually repair and revise the master plan. (Para. 0059). After the master plan is repaired and revised, a user may publish the new master plan to a relational database for future execution. (Para. 0061).

From the foregoing, it is respectfully submitted that Shekar fails to disclose a computer readable media having instructions which perform at least the claimed step of constructing a plurality of alternative fulfillment plans in response to the receipt of an order for an item. As discussed above, in Shekar, a master plan 102, which is utilized to take such actions as sell (230), purchase (235), make (240), and store/move (245), **is selected and published for execution at a**

**time prior to performing these operations.** (Para. 0038). Thus, by its plain language, Shekar not only fails to disclose the claimed computer-readable media instruction performed step of constructing a plurality of alternative fulfillment plans in response to the receipt of an order for an item but, in fact, teaches directly away from this claimed element, i.e., Shekar teaches responding to order information by using an already constructed master plan. Thus, for at least the reason that Shekar fails to disclose the claimed computer-readable media having instructions which perform the step of “in response to receipt of the order, constructing a plurality of alternative fulfillment plans for moving the item from a sourcing point to one or more geographic locations within the supply chain,” considering each and every word set forth therein, it is respectfully submitted that the rejection under 35 U.S.C. § 102 must be withdrawn.

It is additionally submitted that, Shekar fails to disclose a computer-readable media having instructions which perform the steps of evaluating and selecting for implementation one of a plurality of alternative fulfillment plans to position an item at a geographic location within the supply chain, which fulfillment plans, as claimed, have been constructed in response to the receipt of an order for that item. Rather, Shekar discloses that a user interacts with a planning toolkit to generate master plan revisions. That a user performs these actions has been acknowledged in the Office Action of November 27, 2004 on pages 3 and 5 wherein Shekar was quoted as follows “Once a plan is regenerated a user may want to evaluate it for its “goodness”...Fig. 5 shows tools that may be provided to assist a user in evaluating results of a plan execution...After repair and review of the plan, a user may publish the plan, for example, to relational database.” Thus, by its plain language, Shekar fails to disclose not only the claimed computer-readable media instructions which first construct a plurality of alternative fulfillment plans in response to the receipt of an order for an item but also the claimed computer-readable

media instructions which then evaluate and select one of the alternative fulfillment plans constructed in response to the receipt of the order for an item to thereby position, i.e., store/move, the item that was the subject of the order at a geographic location within a supply chain. For these reasons, it is respectfully submitted that the rejection under 35 U.S.C. § 102 must be withdrawn.

While the Advisory Action of February 2, 2005 asserts that Shekar discloses in Fig. 5 and paras. 0057-0061 that orders are considered when constructing a master plan using the master planning toolkit, it is respectfully submitted that Fig. 5 and paras. 0057-0061 of Shekar do not disclose that the master planning toolkit functions to “construct a plurality of alternative fulfillment plans in response to the receipt of an order for an item,” and then “evaluate each of the constructed plurality of alternative fulfillment plans” to “select for implementation the one of the constructed plurality of alternative fulfillment plans that most closely meets a predetermined criteria” to thereby position the item that was the subject of the order at a geographic location with the supply chain. The applicant will admit that Shekar does illustrate “orders” in Fig. 5. However, it is to be noted that the master planning toolkit does not construct a plurality of alternative master plans in response to the receipt of the “orders” illustrated in Fig. 5 to thereby allow for the selection of one of the master plans *to position the item that was the subject of that order at a geographic location with the supply chain*. Rather, the “orders” illustrated in Fig. 5 are orders that have already been implemented in accordance with a previously published master plan which previously published master plan the user is now evaluating for its “goodness” using the master planning toolkit, i.e., the master planning toolkit is used to evaluate measurements like delivery *performance*, resource *performance*, or inventory *performance*, where performance is defined as “something accomplished.” Again, that the orders of Fig. 5 have been implemented



prior to the use of the master planning tool has been acknowledged in the Office Action of November 27, 2004 on pages 3 and 5 wherein Shekar was quoted as follows “Once a plan is regenerated a user may want to evaluate it for its “goodness”...Fig. 5 shows tools that may be provided to assist a user in evaluating **results of a plan execution**...After repair and review of the plan, a user may publish the plan, for example, to relational database.” Thus, while the master planning toolkit of Shekar may consider results of orders which have already been implemented in accordance with a previously published master plan, i.e., how items have been positioned within the supply chain **in the past** as a result of executing the master plan, Shekar does not disclose, teach, or suggest that the master planning toolkit **is responsive to the receipt of an order for an item to evaluate and select a plan which, in the future, will be used to position the very item that was the subject of the order** at a geographic location within the supply chain. In Shekar, the system only stores/moves items in response to the receipt of order information by implementing the single, previously published master plan. As for the master planning toolkit, it is invoked only *in response to a user* requesting that the *results* of a previously published master plan be manually evaluated to thereby allow the master plan to be manually edited and then implemented to handle future, **different** order information. Accordingly, it is respectfully submitted that the system disclosed within Shekar fails to function in a manner that can be said to include the expressly claimed elements discussed above and, for this reason, the rejection of the claims under 35 U.S.C. § 102 must be withdrawn.

#### **VIII. Conclusion**

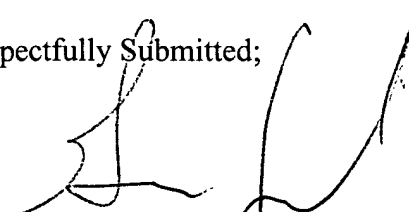
It is respectfully submitted that the disclosure contained within Shekar fails to anticipate or render obvious the claims at issue. Specifically, it has been demonstrated that the text and figures of Shekar cited to in the various Office Actions cannot be said to disclose each and every

element as set forth in the claims, disclose the identical invention in as complete detail as is contained in the claims, or disclose the claimed elements arranged as required by the claims. For these reasons, it is respectfully submitted that the application is in good and proper form for allowance. Such action of the part of the Board is respectfully requested.

Respectfully Submitted;

Date: February 23, 2005

By:



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## APPENDIX I

1-10. (Canceled)

11. A computer readable media having instructions for use in selecting a fulfillment plan for moving an item within a supply chain, the instructions performing steps comprising:

receiving an order for an item;

in response to receipt of the order for the item constructing a plurality of alternative fulfillment plans for moving the item from a sourcing point to one or more geographic locations within the supply chain;

evaluating each of the constructed plurality of alternative fulfillment plans against a predetermined criteria; and

selecting for implementation one of the constructed plurality of alternative fulfillment plans that most closely meets the predetermined criteria, the selected one of the plurality of alternative fulfillment plan being used to position the item at a geographic location within the supply chain thereby making the item available for use in meeting the order.

12. The computer readable media as recited in claim 11, wherein the instructions further perform the step of using a customer specified level of service when constructing the plurality of alternative fulfillment plans.

13. The computer readable media as recited in claim 11, wherein the instructions further perform the step of using branch and bound techniques to determine candidate sourcing points for the item when constructing the plurality of alternative fulfillment plans.

14. The computer readable media as recited in claim 11, wherein the instructions further perform the step of using a customer specified point of delivery when constructing the plurality of alternative fulfillment plans.

15. The computer readable media as recited in claim 11, wherein the instructions further perform the step of using a customer specified delivery date when constructing the plurality of alternative fulfillment plans

16. The computer readable media as recited in claim 11, wherein the instructions further perform the step of using various combinations of sourcing points within the supply chain when constructing the plurality of alternative fulfillment plans.

17. The computer readable media as recited in claim 11, wherein the instructions further perform the step of using customer specified consolidation requirements when constructing the plurality of alternative fulfillment plans.

18. The computer readable media as recited in claim 11, wherein the instructions further perform the step of using activity costs when constructing the plurality of alternative fulfillment plans.

19. The computer readable media as recited in claim 11, wherein the instructions further perform the step of using inventory age when constructing the plurality of alternative fulfillment plans.

20. The computer readable media as recited in claim 11, wherein the instructions further perform the step of using a customer specified price quote when evaluating the constructed plurality of alternative fulfillment plans against a predetermined criteria.